

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **16.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD Nos.760 and 761 of 2014
and
M.P.No.1 of 2014

Y.Vanchikodi .. Petitioner in both CRPs.

VS

1. R.Padmavathy
2. Latha
3. S.Saraswathi
rep.by Power of Attorney
N.V.Banukeshwaran .. Respondents in both
CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 30.08.2012 passed by the learned District Munsif, Tambaram in I.A.Nos.789 and 790 of 2012 in O.S.No.57 of 2008.

For Petitioner : Mr.V.Ramesh
in both CRPs

For Respondents : Served- No appearance
in both CRPs

COMMON ORDER

The plaintiff is the revision petitioner.

2. Challenging the orders passed by the Court below in allowing the applications filed under Section 151 of the Code of Civil Procedure and Order 16 Rule 1 of the Code of Civil Procedure by the respondents/defendants to re-open the plaintiff's side evidence and to issue summon to the authority, who had issued the Death Certificate, to speak about the same, the present revisions have been preferred.

2. Heard the learned counsel for the revision petitioner. Despite notice being served on the respondents, they have neither appeared in person nor through the counsel.

3. The case in brief is as follows:

(i) The revision petitioner/plaintiff filed the suit for a permanent injunction restraining the respondents/defendants from in any way interfering into her peaceful possession and

enjoyment of the suit scheduled property. While the suit is at the argument stage, the power of attorney of the defendants had marked the death certificate of late Krishnamurthy as Ex.B3 dated 19.09.1972, but the plaintiff had produced the death certificate of the said Krishnamurthy dated 19.09.1977, as Ex.A13 during the cross examination of DW1. Therefore, it became necessary to examine the issuing authority of the death certificate. Hence, the defendants had filed the above applications to re-open the case of the plaintiff's side evidence for the purpose of examining the certificate issuing authority.

(ii) The said applications were resisted by the plaintiff by contending that it is only an exercise of procrastination, as the matter is now posted for arguments. It is further stated by her that DW1 had admitted the said document and the witness cannot be examined once the document is admitted and received in evidence.

(iii) The trial court after considering the rival submissions had allowed the applications, against which, the present revisions

are filed.

4. From the perusal of the typed set of papers, it is seen that before the Court below, the defendants had contended that they have produced the death Certificate of late Krishnamurthi under Ex.B3 dated 19.09.1972 whereas the plaintiff's side had marked the death certificate as Ex.A13 showing the date as 19.09.1977. As there is a difference in the year of death of the said Krishnamurthy, the defendants is seeking to summon the issuing authority of the death certificate to verify the genuineness of Ex.A13.

5. The only contention of the revision petitioner/plaintiff is that once the document is admitted in evidence, without any objection, the question of examining the authority does not arise. However, the trial court has held that as the very doubt has arisen in the minds of the Court itself to know about the correct date of death of a person and also about the authenticity of the death certificate produced, it becomes necessary to examine the issuing authority, viz., Dr.P.Guganathan, Health Officer, Corporation of Chennai to speak about the said certificates.

Accordingly, allowed the applications filed by the defendants.

6. Order XVIII Rule 17 of the Code of Civil Procedure, primarily intended for the Courts to recall a witness for the purpose of clarifying any doubt by the Court itself in examining the parties. But in due course of practice, the said provision is being exercised at the instance of the parties to recall and reopen the case and to receive documents, if any. The power is also discretionary and the same should be used sparingly in appropriate cases to get clarification of any doubts, the Court may have in that regard.

7. In the case on hand, the learned District Munsif, Tambaram has specifically stated that in order to know the genuineness of the death certificate, it is necessary to examine the issuing authority. No doubt the matter is posted for arguments. But when the doubt has been created in the minds of the Court, in the exercise of its discretion, it has allowed the application to summon the issuing authority of the Death Certificate to speak about the same under Order 16 Rule 1 of the Code of Civil Procedure and by re-opening the plaintiff's side

evidence.

8. In the light of the above said fact, I do not find any infirmity in the orders passed by the Court below, warranting interference in these revisions, as examining the said authority would eliminate any doubt, which would be in the interest of both the parties.

9. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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vj2

Index: yes/No

Internet: yes

To

The District Munsif, Tambaram

PUSHPA SATHYANARAYANA,J.,

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